IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1137 of 2007
With
CIVIL APPLICATION No. 3178 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INS. CO. LTD - Appellant(s)
Versus
SAMSUDDIN AHMEDMIYA SAIYED & 2 - Defendant(s)

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Appearance :
MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR KASHYAP R JOSHI for Defendant(s) : 1,
SERVED BY RPAD - (R) for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/06/2007
ORAL JUDGMENT

Present Appeal has been filed under Section 30 of the Workmen Compensation Act by the appellant herein, original-respondent No.2,

United India Insurance Company Ltd., challenging that portion of the judgment and order passed by the learned Commissioner for Workmen Compensation, Bharuch dated 21.3.2006 in Workmen Compensation [Fatal] Application No. 20/2003 by which the appellant is directed to pay penalty quantified at Rs. 2,13,570, i.e., 50% of the awarded amount of compensation.

2. Shri Vibhuti Nanavati, learned advocate appearing on behalf of the appellant, Insurance Company has submitted that though in the body of the judgment and in the discussion while answering Issue No.5 the learned Commissioner has specifically observed and held that claimant would be entitled to recover the amount of penalty from the opponent No.1 still in the operative portion of the order the learned Commissioner has directed the Insurance Company to pay the penalty. He has also further submitted that even on merits also considering the judgment of the Hon'ble Supreme Court in the

case of **Ved Prakash Garg vs. Premi Devi and Others,** reported in **AIR 1997 S.C. Page 3854,** the Insurance Company cannot be held liable so far as the amount of penalty is concerned. Shri Kashyap Joshi, learned advocate has appeared on behalf of the original-claimant. He has submitted that it is true that while answering Issue No.5 the learned Commissioner has specifically observed and held that the opponent No.1 is to pay the penalty still by mistake in the operative portion of the order it is directed that the Insurance Company should pay the penalty and that it seems to be a mistake on the part of the learned Commissioner.

3. This Court has gone through the judgment and order passed by the learned Commissioner for Workmen Compensation and considering the same it appears that while dealing with Issue No.5 with regard to penalty the learned Commissioner for Workmen Compensation has specifically observed and held that the original-claimant is entitled

to recover the penalty from original-opponent No.1, still in the operative portion of the order the learned Commissioner has directed the appellant herein, original-respondent No.2 Insurance Company to pay the penalty which is quantified at Rs. 2,13,570, i.e., 50% of the amount of compensation awarded. It seems that there is a bonafide mistake on the part of the Commissioner in issuing such a direction in the operative portion of the order. Even otherwise considering the judgment of the Hon'ble Supreme Court in the case of *Ved Prakash Garg [supra]* the Insurance Company cannot be held liable to pay the penalty. Under the circumstances, on merits also the order passed by the learned Commissioner for Workmen Compensation directing the Insurance Company to pay the penalty cannot be sustained.

4. Under the circumstances and for the reasons stated above, the Appeal succeeds. The judgment and order dated 21.3.2006 passed by the learned Commissioner for Workmen Compensation,

Bharuch in Workmen Compensation (Fatal) Application No. 20 of 2003, insofar as it directs the appellant Insurance Company to pay the penalty of Rs. 2,31,570, i.e., 50% of the amount of compensation awarded is hereby quashed and set aside. The First Appeal is accordingly allowed. However, there shall be no order as to costs. It goes without saying that as the appeal is allowed the appellant shall be entitled to get back the amount of Rs. 2,13,570 already deposited by the appellant. There shall be no order as to costs.

5. In view of disposal of First Appeal, no order in Civil Application No. 3178 of 2007.

[M.R. Shah, J.]

rmr.